

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Package Concepts & Materials, Inc.,)	Civil Action No. 6-05-1184-RBH
)	
Plaintiff,)	
)	
vs.)	DEFENDANT JIF-PAK'S NOTICE OF
)	MOTION AND MOTION TO DISMISS
JIF-PAK,)	PLAINTIFF'S COMPLAINT FOR
)	LACK OF SUBJECT MATTER
Defendant.)	JURISDICTION
)	
)	
)	

PLEASE TAKE NOTICE that Defendant JIF-PAK will and hereby does move this Court for an order dismissing Plaintiff's Complaint for lack of subject matter jurisdiction.

Defendant JIF-PAK's motion to dismiss Plaintiff's Complaint is based on the ground that There can be no case or controversy between these parties on the facts alleged in the complaint because Defendant JIF-PAK does not own the patent at issue. Plaintiff could not have and had no reasonable apprehension that Defendant would sue Plaintiff. Plaintiff has named the wrong party. There therefore is no case or controversy existing between Plaintiff and Defendant. Since there is no case or controversy, this Court does not have subject matter jurisdiction over Plaintiff's declaratory relief count.

This motion to dismiss is further based on the ground that it would be futile to allow an amendment complaint naming the patent owners because this Court would not have personal jurisdiction over them. Therefore, an amended complaint naming the patent owners would ultimately have to be dismissed for lack of personal jurisdiction.

This motion to dismiss is further based on the ground that upon dismissal of Plaintiff's declaratory relief count, the only remaining cause of action for interference with contract is a

state cause of action over which this Court would not have even supplemental jurisdiction.

This motion to dismiss is further based on all the papers on file in this action and on such further evidence and argument as may be presented at the hearing on this motion.

Respectfully submitted.

s/Neil C. Jones

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